IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 290 of 2007 (S/S)

Gurdev Singh
S/o Mahendra Singh
Aged about 41 years,
Junior Engineer, Minor Irrigation,
Block-Chakrata
District- Dehradun ..... **Petitioner**

Versus

1. State of Uttarakhand through its Secretary, Minor Irrigation, Department of Rural Development and Panchayati Raj Dehradun, District – Dehradun.
2. Additional Secretary, Minor Irrigation, Department, Government of Uttarakhand Dehradun, District – Dehradun
3. Chief Engineer and Head of the Department, Minor Irrigation Department, Uttarakhand Dehradun, District – Dehradun .....**Respondents**

Hon'ble M.M.Ghildiyal, J.

Heard Sri Rakesh Thapliyal, learned counsel for the petitioner and learned Standing Counsel State of Uttarakhand for the respondents.

By means of this writ petition, the petitioner has prayed for the following relief:-

1. Issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 22.3.2007 (Annexure No. 1) passed by the respondent no. 1 as well as the order dated 23.3.2007 (Annexure No. 2) passed by the respondent no. 3.
2. Issue any suitable writ, order or direction which this Hon'ble High Court may deem fit and proper on the basis of the facts and circumstances of the case.
3. Award the cost of the petition to the petitioner.

Vide order dated 22nd March, 2007, the Secretary, Minor Irrigation Department of Rural Development and Panchayati Raj

Dehradun, District Dehradun directed the Chief Engineer to suspend the petitioner, who is working as Junior Engineer, Minor Irrigation Department, Block Mori, District Uttarakashi.

This order was passed by the Secretary after considering the remarks made by Chief Engineer, Minor Irrigation Department on the report of Planning Department, and on the basis of inspection report made in pursuance to the order dated 22nd March, 2007 passed by the Secretary, Irrigation Department, the Chief Engineer/ Head of Department, Minor Irrigation Department, Uttarakhand passed order dated 23.03.2007 putting the petitioner under suspension pending inquiry.

Learned counsel for the petitioner has challenged these two orders on the ground that the order has been passed in mechanical way by the Secretary as well as by the Chief Engineer and prior to passing of the aforesaid orders, it was not felt necessary by the authorities even to consider whether the charges are of serious nature or not, which ultimately, if found proved in the departmental inquiry, the petitioner may be terminated. it was also not considered by the authorities whether the suspension of petitioner was at all necessary as incumbent should be placed under suspension only in case there is possibility that the incumbent will influence the departmental proceedings or will be able to manipulate the relevant documents relating to the inquiry, and without going through all these aspects, the respondents have passed suspension order mechanically.

He has placed reliance of this Hon'ble Court's judgment in the case of **S.K. Goel Versus State of Uttarakhand and another, 2005 (2) U.D., 11,** wherein this Court has held that it is not necessary to place a Government employee under

suspension in every case, where disciplinary proceedings are contemplated. If continuance of the employee on the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings, proper conduct of enquiry and disciplinary proceedings can be ensured by mere transfer of the employee, but if, in view of the nature of irregularities alleged, the continuance of the employee in service, from the disciplinary proceeding is considered undesirable, the employee can be placed under suspension.

In the present case, the petitioner is not performing his duties as Junior Engineer today at Uttarkashi and as such there is no chance of prejudicing the enquiry or manipulation of documents relating to the enquiry. He has further submitted that the report on the basis of which the petitioner has been put under suspension is in respect of construction of Hydram projects in the District of Uttarkashi for which sum of Rs. 18,91,600/- was allotted, however, out of this amount allocate, only a sum of Rs. 5,49,000/- was released till March, 2005 and not a single penny was released thereafter till date. The report, the basis of which the impugned order is pass, specifically stated that though two Hydrams have been constructed, however, the cover was not constructed because of which the Hydrams are not functioning. The submission of the learned counsel for the petitioner is that petitioner was released only a sum of Rs. 5 lacs and it was not possible for the petitioner to complete two Hydrams without further release of the amount by the District Panchayat, which was already allocated by the Government. He has also placed reliance on the letter of Executive Engineer, Minor Irrigation Department, Uttarakashi dated 19th March, 2007 addressed to Superintending

Engineer, wherein, he has stated that out of 4, two units have already been established along with drum cover and the remaining two will be constructed after receiving the amount of Rs. 8 lacs, which is to be released by the Gram Panchayat for which efforts are being made. The petitioner has submitted that while passing the order of suspension, this letter was not considered by the authority and, thus, impugned order is not sustainable in the eye of law.

Considering all these facts, I deem it fit and proper that since the petitioner was transferred from Uttarkashi in the year 2006 and at present he is not present in the District of Uttarakashi, where these Hydram Projects are situated, I direct the petitioner to make a representation to the Chief Engineer within a period of one week and the Chief Engineer, in view of the observation made by this Court in this judgment and also in the case of **S.K. Goel** (supra) and also after consideration of letter of Executive engineer, may pass appropriate order within a period of one week from the date of production of certified copy of this order along with the representation.

With this direction, the writ petition is finally disposed of.

04.04.2007 **(M.M. Ghildiyal, J.)**
VKS